

REMARKS

This Response is submitted in reply to the Non-Final Office Action of March 3, 2005. Claims 1-16 and 23-25 are pending in the present application. Claims 1, 13 and 23 have been amended for clarification purposes. No new matter is added by these amendments.

Prompt and favorable action is respectfully solicited.

Rejections Under 35 U.S.C. §103(a)

Claims 1-9 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 4,907,586 to Bille et. al (“Bille”) in combination with U.S. Patent No. 5,090,955 to Simon (“Simon”). Applicant respectfully disagrees with and traverses these rejections.

Claim 1 relates to a method of modifying a cornea of an eye having a main optical axis. The method includes, among other things, firing a laser at the cornea to form a corneal flap. A peripheral edge of the corneal flap forms an arc at least partly around the main optical axis, and the peripheral edge is movable relative to the second surface. The method also includes lifting the corneal flap at the peripheral edge.

The Bille patent relates to a laser used for eye surgery. The laser can be used to form pockets or T-cuts to correct myopia, hyperopia or astigmatism. The Action argues that the upper piece of tissue forming the pocket is a corneal flap. Applicant respectfully disagrees. Bille’s upper piece of tissue is merely an immobile cover for the pocket. However, even if Bille’s upper piece of tissue forming the pocket were considered a corneal flap, which it is not, at best it would be a flap without a peripheral edge that is movable relative to the second surface, as recited in independent Claim 1. Therefore, Bille does not disclose or suggest firing a laser to form a corneal flap “wherein a peripheral edge of the corneal flap forms an arc at least partly around the main optical axis, the peripheral edge being movable relative to the second surface” or “lifting the corneal flap at the peripheral edge”.

Similarly, the Simon patent relates to a method for implanting a synthetic gel into a pocket in the cornea. Simon teaches making a pocket, or tunnel, in the cornea using a corkscrew

delaminator. The Action argues that the upper piece of tissue forming the pocket is a corneal flap. Applicant respectfully disagrees. For substantially the same reasons discussed above, Simon's upper piece of tissue is an immobile cover for the pocket. Further, even if the tissue at the incision site were considered a corneal flap, which it is not, the upper piece of tissue at the incision site taught by Simon does not have a peripheral edge of the corneal flap that forms an arc at least partly around the main optical axis, wherein the peripheral edge is movable relative to the second surface, as recited in independent Claim 1. As a result, the combination of Bille and Simon does not disclose or suggest firing a laser to form a corneal flap "wherein a peripheral edge of the corneal flap forms an arc at least partly around the main optical axis, the peripheral edge being movable relative to the second surface" or "lifting the corneal flap at the peripheral edge".

Thus, amended Claim 1 and Claims 2-12, which depend from amended Claim 1, are each patentably distinguished over Bille in combination with Simon and are in condition for allowance.

Claims 23-25 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Simon in combination with U.S. Patent No. 4,729,372 to L'Esperance ("L'Esperance"). Applicant respectfully disagrees with and traverses these rejections.

Claim 23 relates to a method of modifying a cornea of an eye having a main optical axis. The method includes, among other things, forming a corneal flap having a peripheral edge that forms an arc at least partly around the main optical axis, the peripheral edge being movable relative to the second surface. The method also includes lifting the corneal flap at the peripheral edge.

As substantially discussed above, Simon does not disclose or suggest forming a corneal flap "wherein a peripheral edge of the corneal flap forms an arc at least partly around the main optical axis, the peripheral edge being movable relative to the second surface" or "lifting the corneal flap at the peripheral edge". Similarly, the L'Esperance patent relates to correcting the curvature of an eye by ablating the surface of the external surface of the cornea. However, L'Esperance does not disclose or suggest forming a corneal flap "wherein a peripheral edge of

the corneal flap forms an arc at least partly around the main optical axis, the peripheral edge being movable relative to the second surface" or "lifting the corneal flap at the peripheral edge". As a result, the combination of Simon and L'Esperance does not disclose or suggest forming a corneal flap "wherein a peripheral edge of the corneal flap forms an arc at least partly around the main optical axis, the peripheral edge being movable relative to the second surface" or "lifting the corneal flap at the peripheral edge".

Thus, amended Claim 23 and Claims 24-25, which depend from amended Claim 23, are each patentably distinguished over Simon in combination with L'Esperance and are in condition for allowance.

Claims 10-16 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Bille in combination with Simon and in further view of L'Esperance. Applicant respectfully disagrees with and traverses these rejections.

Claim 1, from which Claims 10-12 depend, is discussed above. Claim 13 relates to a method of modifying a cornea of an eye having a main optical axis. The method includes, among other things, firing the ultrashort pulse laser at the cornea to form a corneal flap. A peripheral edge of the corneal flap forms an arc at least partly around the main optical axis, and the peripheral edge is movable relative to the second surface. The method also includes lifting the corneal flap at the peripheral edge.

As substantially discussed above, none of Bille, Simon or L'Esperance disclose or suggest firing a laser to form a corneal flap "wherein a peripheral edge of the corneal flap forms an arc at least partly around the main optical axis, the peripheral edge being movable relative to the second surface" or "lifting the corneal flap at the peripheral edge". As a result, the combination of Bille and Simon in further view of L'Esperance does not disclose or suggest all of the limitations of Claims 1 and 13.

Thus, amended Claim 1 and Claims 10-12, which depend from amended Claim 1, and amended Claim 13 and Claim 14-16, which depend from amended Claim 13, are each patentably

distinguished over Bille in combination with Simon and in further view of L'Esperance and are in condition for allowance.

Respectfully submitted,

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